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*ATTORNEYS FOR THE IDAHO GROUND WATER APPROPRIATORS*

**IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT  
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS**

TWIN FALLS CANAL COMPANY,  
NORTH SIDE CANAL COMPANY, A &  
B IRRIGATION DISTRICT, AMERICAN  
FALLS RESERVOIR DISTRICT #2,  
BURLEY IRRIGATION DISTRICT,  
MILNER IRRIGATION DISTRICT, and  
MINIDOKA IRRIGATION DISTRICT,

Petitioner,

vs.

GARY SPACKMAN, in his capacity as  
Interim Director of the Idaho Department of  
Water Resources, and THE IDAHO  
DEPARTMENT OF WATER  
RESOURCES,

Respondents.

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IN THE MATTER OF THE IDAHO  
GROUND WATER APPROPRIATORS,  
INC.'S MITIGATION PLAN FOR  
CONVERSIONS, DRY-UPS &  
RECHARGE

**Case No. CV-10-3822**

**SUPPLEMENTAL AUTHORITY**

COME NOW, the Idaho Ground Water Appropriators, for and on behalf of its Ground Water District members by and through the undersigned counsel, and pursuant to Idaho Appellate Rule 34(f)(1). The following supplemental authority is provided on the issue of whether the Ground Water Districts have the authority to act on behalf of its members for mitigation purposes: Idaho Code § 42-5224(11) and House Bill No. 848. House Bill. No. 848 is attached hereto for the court's reference.

Dated this 14<sup>th</sup> day of March, 2011.

  
Candice M. McHugh

## CERTIFICATE OF SERVICE

I hereby certify that on this 14th day of March, 2011, I served a true and correct copy of the foregoing by delivering it to the following individuals by the method indicated below, addressed as stated:

<p><i>Original to:</i>                  Julie Murphy                  SRBA Deputy Clerk                  253 3<sup>rd</sup> Ave. North                  PO Box 2707                  Twin Falls, ID 83303-2707</p>	<p><input type="checkbox"/> U.S. Mail  <input checked="" type="checkbox"/> Facsimile – 208-736-2121  <input type="checkbox"/> Overnight Mail  <input type="checkbox"/> Hand Delivery  <input type="checkbox"/> Email</p>
<p>Deputy Attorneys General                  Garrick L. Baxter                  Chris M. Bromley                  Idaho Department of Water Resources                  P.O. Box 83720                  Boise, Idaho 83720-0098                  Fax: 208-287-6700  <a href="mailto:garrick.baxter@idwr.idaho.gov">garrick.baxter@idwr.idaho.gov</a>  <a href="mailto:chris.bromley@idwr.idaho.gov">chris.bromley@idwr.idaho.gov</a></p>	<p><input checked="" type="checkbox"/> U.S. Mail  <input type="checkbox"/> Facsimile  <input type="checkbox"/> Overnight Mail  <input type="checkbox"/> Hand Delivery  <input checked="" type="checkbox"/> Email</p>
<p>C. Tom Arkoosh                  Arkoosh Law Offices, Chtd.                  301 Main Street; P.O. Box 32                  Gooding, ID 83330  <a href="mailto:tarkoosh@capitolawgroup.net">tarkoosh@capitolawgroup.net</a></p>	<p><input checked="" type="checkbox"/> U.S. Mail  <input type="checkbox"/> Facsimile  <input type="checkbox"/> Overnight Mail  <input type="checkbox"/> Hand Delivery  <input checked="" type="checkbox"/> Email</p>
<p>W. Kent Fletcher                  Fletcher Law Office                  P.O. Box 248                  Burley, Idaho 83318-0248  <a href="mailto:wkf@pmt.org">wkf@pmt.org</a></p>	<p><input checked="" type="checkbox"/> U.S. Mail  <input type="checkbox"/> Facsimile  <input type="checkbox"/> Overnight Mail  <input type="checkbox"/> Hand Delivery  <input checked="" type="checkbox"/> Email</p>
<p>John A. Rosholt                  John K. Simpson                  Travis L. Thompson                  Barker, Rosholt &amp; Simpson                  113 Main Avenue W., Ste 303                  Twin Falls, ID 83301-6167  <a href="mailto:jar@idahowaters.com">jar@idahowaters.com</a>  <a href="mailto:tlr@idahowaters.com">tlr@idahowaters.com</a>  <a href="mailto:pla@idahowaters.com">pla@idahowaters.com</a></p>	<p><input checked="" type="checkbox"/> U.S. Mail  <input type="checkbox"/> Facsimile  <input type="checkbox"/> Overnight Mail  <input type="checkbox"/> Hand Delivery  <input checked="" type="checkbox"/> Email</p>

  
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 Candice M. McHugh

## STATEMENT OF PURPOSE

RS 14293

The purpose of this legislation is to provide that the holders of certain junior priority ground water rights on the Eastern Snake River Plain subject to administration within water districts created pursuant to Chapter 6, Title 42, Idaho Code, be required to provide mitigation to the holders of senior priority water rights from hydraulically connected surface water sources beginning April 1, 2004, for material injury caused by ground water withdrawal and use.

## FISCAL IMPACT

Enactment of this legislation will have no effect upon the state's general fund or other state or local funds.

### Contact

Name: Representative Bert Stevenson  
Representative Dell Raybould  
Phone: (208) 332-1000

IN THE HOUSE OF REPRESENTATIVES

HOUSE BILL NO. 848

BY WAYS AND MEANS COMMITTEE

AN ACT

1 RELATING TO THE ADMINISTRATION OF GROUND WATER RIGHTS WITHIN THE EASTERN SNAKE  
2 RIVER PLAIN; DECLARING LEGISLATIVE INTENT RELATING TO THE CONJUNCTIVE  
3 ADMINISTRATION OF CERTAIN WATER RIGHTS; DECLARING LEGISLATIVE INTENT  
4 RELATING TO THE PROVISION OF CERTAIN MITIGATION FOR MATERIAL INJURY CAUSED  
5 BY GROUND WATER WITHDRAWAL AND USE; DECLARING LEGISLATIVE INTENT RELATING  
6 TO THE EQUITABLE SHARING OF CERTAIN MITIGATION AND PROVIDING THAT BEGIN-  
7 NING APRIL 1, 2004, THE HOLDERS OF CERTAIN GROUND WATER RIGHTS SHALL BE  
8 DEEMED NONMEMBER PARTICIPANTS SOLELY FOR MITIGATION PURPOSES IN A GROUND  
9 WATER DISTRICT PURSUANT TO THE PROVISIONS OF SECTION 42-5259, IDAHO CODE;  
10 AND DECLARING AN EMERGENCY.  
11

12 Be It Enacted by the Legislature of the State of Idaho:

13 SECTION 1. It is legislative intent that the conjunctive administration  
14 of water rights from the Eastern Snake River Plain Aquifer and hydraulically  
15 connected surface water sources be achieved in a manner consistent with the  
16 prior appropriation doctrine and state law.

17 SECTION 2. It is legislative intent that the holders of junior priority  
18 ground water rights on the Eastern Snake River Plain subject to administration  
19 within water districts created pursuant to Chapter 6, Title 42, Idaho Code, be  
20 required to provide mitigation to the holders of senior priority water rights  
21 from hydraulically connected surface water sources beginning April 1, 2004,  
22 for material injury caused by ground water withdrawal and use.

23 SECTION 3. It is the intent of the Legislature to ensure that the burden  
24 of providing mitigation for junior ground water diversions from the Eastern  
25 Snake River Plain Aquifer causing material injury to senior priority water  
26 rights is equitably shared by the holders of all such junior ground water  
27 rights subject to administration within water districts created pursuant to  
28 Chapter 6, Title 42, Idaho Code. It is, therefore, hereby provided that begin-  
29 ning April 1, 2004, all holders of such ground water rights not otherwise cov-  
30 ered by a mitigation plan and that are not members or applicants for member-  
31 ship of a ground water district created pursuant to Chapter 52, Title 42,  
32 Idaho Code, with a mitigation plan approved by the Director of the Department  
33 of Water Resources, shall be deemed a nonmember participant solely for mitiga-  
34 tion purposes and shall be required to pay for mitigation, pursuant to Section  
35 42-5259, Idaho Code, in the ground water district situated nearest the lands  
36 to which the water right is appurtenant, as determined by the Director of the  
37 Department of Water Resources in case of dispute.

38 SECTION 4. An emergency existing therefor, which emergency is hereby  
39 declared to exist, this act shall be in full force and effect on and after its  
40 passage and approval.